

**AMENDMENT OFFERED BY MR. BROWN OF OHIO  
AND MR. DINGELL  
TO THE MEDICAID RECONCILIATION PROVISIONS**

(Page & line nos. refer to Committee Print of 6/11/97,  
MEDICAID.007)

Page 46, after line 13, at the end of chapter 2 of  
subtitle E, add the following new section:

1 SEC. 3464. ADDITIONAL FRAUD AND ABUSE PROTECITONS  
2 IN MANAGED CARE.

3 (a) PROTECTION AGAINST MARKETING ABUSES.—

4 Section 1903(m) (42 U.S.C. 1396b(m)) is amended—

5 (1) in paragraph (2)(A)(viii), by inserting “and  
6 compliance with the requirements of paragraphs (7)  
7 and (8) (9)” after “of this subsection”, and

8 (2) by adding at the end the following:

9 “(7)(A)(i) A health maintenance organization with  
10 respect to activities under this subsection may not distrib-  
11 ute directly or through any agent or independent contrac-  
12 tor marketing materials within any State—

13 “(I) without the prior approval of the State;  
14 and

15 “(II) that contain false or materially misleading  
16 information.

1       “(ii) In the process of reviewing and approving such  
2 materials, the State shall provide for consultation with a  
3 medical care advisory committee.

4       “(iii) The State may not enter into or renew a con-  
5 tract with a health maintenance organization for the provi-  
6 sion of services to individuals enrolled under the State  
7 plan under this title if the State determines that the entity  
8 distributed directly or through any agent or independent  
9 contractor marketing materials in violation of clause  
10 (i)(II).

11       “(B) A health maintenance organization shall distrib-  
12 ute marketing materials to the entire service area of such  
13 organization.

14       “(C) A health maintenance organization, or any  
15 agency of such organization, may not seek to influence an  
16 individual’s enrollment with the organization in conjunc-  
17 tion with the sale of any other insurance.

18       “(D) Each health maintenance organization shall  
19 comply with such procedures and conditions as the Sec-  
20 retary prescribes in order to ensure that, before an individ-  
21 ual is enrolled with the organization under this title, the  
22 individual is provided accurate oral and written and suffi-  
23 cient information to make an informed decision whether  
24 or not to enroll.

1       “(E) Each health maintenance organization shall not,  
2 directly or indirectly, conduct door-to-door, telephonic, or  
3 other ‘cold call’ marketing of enrollment under this title.”.

4       (b) PROHIBITING AFFILIATIONS WITH INDIVIDUALS  
5 DEBARRED BY FEDERAL AGENCIES.—Section 1903(m)  
6 (42 U.S.C. 1396b(m)) is further amended by adding at  
7 the end the following:

8       “(9)(A) A health maintenance organization may not  
9 knowingly—

10               “(i) have a person described in subpara-  
11 graph (C) as a director, officer, partner, or per-  
12 son with beneficial ownership of more than 5  
13 percent of the organization equity; or

14               “(ii) have an employment, consulting,  
15 or other agreement with a person described  
16 in such subparagraph for the provision of  
17 items and services that are significant and  
18 material to the organization’s obligations  
19 under its contract with the State.

20       “(B) If a State finds that a health maintenance orga-  
21 nization is not in compliance with clause (i) or (ii) of sub-  
22 paragraph (A), the State—

23               “(i) shall notify the Secretary of such non-  
24 compliance;

1           “(ii) may continue an existing agreement with  
2           the organization unless the Secretary (in consulta-  
3           tion with the Inspector General of the Department  
4           of Health and Human Services) directs otherwise;  
5           and

6           “(iii) may not renew or otherwise extend the  
7           duration of an existing agreement with the organiza-  
8           tion unless the Secretary (in consultation with the  
9           Inspector General of the Department of Health and  
10          Human Services) provides to the State and to the  
11          Congress a written statement describing compelling  
12          reasons that exist for renewing or extending the  
13          agreement.

14          “(C) A person is described in this subparagraph if  
15          such person—

16               “(i) is debarred, suspended, or otherwise ex-  
17               cluded from participating in procurement activities  
18               under the Federal acquisition regulation or from  
19               participating in nonprocurement activities under reg-  
20               ulations issued pursuant to Executive Order 12549;  
21               or

22               “(ii) is an affiliate (within the meaning of the  
23               Federal acquisition regulation) of a person described  
24               in clause (i).”.

1 (c) APPLICATION OF STATE CONFLICT-OF-INTEREST  
2 SAFEGUARDS.—Section 1903(m)(1)(A) (42 U.S.C.  
3 1396b(m)(1)(A)) is amended—

4 (1) by striking “and” at the end of clause (x),

5 (2) by striking the period at the end of clause  
6 (xi), and

7 (3) by inserting after clause (xi) the following:

8 “(xii) the State has in effect conflict-of-interest  
9 safeguards with respect to officers and employees of  
10 the State with responsibilities relating to contracts  
11 with such organizations and to any default enroll-  
12 ment process that are at least as effective as the  
13 Federal safeguards provided under section 27 of the  
14 Office of Federal Procurement Policy Act (41 U.S.C.  
15 423), against conflicts of interest that apply with re-  
16 spect to Federal procurement officials with com-  
17 parable responsibilities with respect to such con-  
18 tracts.”.

19 (d) LIMITATION ON AVAILABILITY OF FFP FOR USE  
20 OF ENROLLMENT BROKERS.—Section 1903(b) (42 U.S.C.  
21 1396b(b)) is amended by adding at the end the following:

22 “(4) Amounts expended by a State for the use an  
23 enrollment broker in marketing health maintenance orga-  
24 nizations and other managed care entities to eligible indi-  
25 viduals under this title shall be considered, for purposes

1 of subsection (a)(7), to be necessary for the proper and  
2 efficient administration of the State plan but only if the  
3 following conditions are met with respect to the broker:

4       “(A) The broker is independent of any such en-  
5       tity and of any health care providers (whether or not  
6       any such provider participates in the State plan  
7       under this title) that provide coverage of services in  
8       the same State in which the broker is conducting en-  
9       rollment activities.

10       “(B) No person who is an owner, employee,  
11       consultant, or has a contract with the broker either  
12       has any direct or indirect financial interest with  
13       such an entity or health care provider or has been  
14       excluded from participation in the program under  
15       this title or title XVIII or debarred by any Federal  
16       agency, or subject to a civil money penalty under  
17       this Act.”.

18       (e) EFFECTIVE DATE.—The amendments made by  
19       this section shall take effect on January 1, 1998.